IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

Bail Appl..No. 3882 of 2007()

CRIME NO.306/07 OF GURUVAYOOR POLICE STATION

PETITIONER/ACCUSED

SUMESH, AGED 32 YEARS,
S/O V.UNNIKRISHNAN, CHEEREDATH HOUSE,
PUTHENPALLI DESOM, IRINGAPPURAM VILLAGE,
CHAVAKKAD TALUK, THRISSUR DISTRICT.

BY ADV. SRI.RAJIT
SRI.RANJIT BABU

RESPONDENTS: STATE

STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 3882 of 2007

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Dated this the 28th day of June, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under Sections 353 and 332 I.P.C. The alleged incident took place on 30.5.2007 at 7 p.m. The crux of the allegations is that when a police constable took objection to the petitioner speaking on the mobile phone while on a motor cycle, the petitioner assaulted the police constable as also the Asst. Sub Inspector, who had reached the scene. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the allegations are totally false. The boot is really on the other leg. The petitioner happens to be the Secretary of the local committee of C.P.M. and the petitioner had gone to the scene of the crime only to talk over and settle the dispute. There was improper behaviour towards the petitioner by the police officials. Investigation has been conducted by the Dy.S.P., in which it has been concluded that there was improper behaviour on the part of the police officials also. The

learned counsel for the petitioner prays that directions under Section 438 Cr.P.C. may be issued to save the petitioner from the trauma of arrest and detention.

3. I have considered the submissions made. Obviously the relationship between the local police, who is to investigate the crime, and the petitioner stands strained. I am, in these circumstances, satisfied that it will be only appropriate to give the petitioner an opportunity to surrender before the learned Magistrate having jurisdiction and seek regular bail without the threat and risk of arrest and incarceration by the local police officials before the petitioner gets an opportunity to surrender before the learned Magistrate and seek regular bail.

4. In the result:

(1) This application is allowed.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioner shall surrender before the learned Magistrate on 5.7.2007 at 11 a.m. He may apply for regular bail after giving prior notice to the Prosecutor in charge of the case. The learned Magistrate shall consider the application for bail on merits and pass appropriate orders on the date of surrender itself. I direct that the prosecution shall on

5.7.2007 make available to the learned Magistrate the case diary as also the report submitted by the Dy.S.P., who conducted the departmental enquiry into the controversy. The learned Magistrate must pass appropriate orders on merits after adverting to all circumstances.

(b) If the petitioner does not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 5.7.07 and the police shall be at liberty thereafter to arrest the petitioner and deal with him in accordance with law.

(d) If the petitioner were arrested prior to his surrender on 5.7.2007 as directed in clause (1) above, he shall be released on bail on his executing a bond for Rs.25,000/- without any surety undertaking to appear before the learned Magistrate on 5.7.2007.

(R. BASANT)
Judge

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